

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-SJ-067
)	
HQ-103, Inc.)	NAL/Acct. No.200432680001
Licensee of WDIN-FM)	
Camuy, PR)	FRN 0005-0236-68
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 10, 2004

By the Enforcement Bureau, South Central Region, San Juan Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find HQ-103, Inc. ("HQ"), licensee of radio station WDIN Camuy, Puerto Rico, apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section(s) 73.1125(a) and 73.3526(c)(1) of the Commission's Rules ("Rules").¹ Specifically, we find HQ apparently liable for failing to maintain a presence at the station's main studio and failing to make available for inspection all of the required materials in the station's public inspection file.

II. BACKGROUND

2. On November 20, 2003, the FCC Enforcement Bureau's San Juan Office ("San Juan Office") received a complaint of interference from WIUJ, a U.S. Virgin Island broadcast station. WIUJ's manager alleged reduced coverage area in his community of license from WDIN's signal.

3. On December 3, 2003, resident agents from the San Juan Office conducted an inspection of WDIN's main studio located at El Maestro Urbanization, Calle Principal final, Camuy. The agents discovered that the main studio was staffed by one employee, Mr. Antonio Rivera, who explained that the station contract engineer, Raymond Hernandez, had left only a short while earlier and the station manager, Ms. Sandra Rodriguez, was working at a co-owned station in Caguas.² Mr. Rivera told the agents that Ms. Rodriguez would come to the main studio once or twice a week. The agents also found that WDIN's public inspection file was missing letters from the public,³ the issues/program list,⁴ and the station's current contour map.⁵

¹47 C.F.R. §§ 73.1125(a), 73.3526(c)(1).

²Caguas is a 1.5 to 2 hour drive from the WDIN studio

³See 47 C.F.R. § 73.3526(e)(9).

⁴See 47 C.F.R. § 73.3526(e)(12).

⁵See 47 C.F.R. § 73.3526(e)(4).

4. On December 17, 2003, the San Juan Office sent a letter of inquiry (“LOI”) to the licensee requesting additional information regarding possible violations of the main studio and public inspection file rules. On January 19, 2004, the San Juan agents received a formal reply to the LOI via fax and subsequently on January 20, 2004 received another copy in the mail from the licensee’s counsel.

5. In their reply, HQ acknowledged violation of the public inspection file rules pertaining to the issues/program lists and the missing contour map. HQ indicated that the missing documents were now available in the public file. HQ stated that they had received no letters from the public to file; therefore none were required to be filed. They also alleged that Ms. Sandra Rodriguez, secretary/director of HQ, provided the managerial presence at the main studio in Camuy. According to their reply, Ms. Rodriguez spends her mornings at WMID and her afternoons at HQ’s co-owned station WVJP in Caguas. Ms. Rodriguez stated that when she is not in Camuy, she is reachable via phone and delegates all of her managerial responsibilities at WDIN to an assistant supervisor. HQ asserted that Ms. Rodriguez was not present for the agents’ inspection on December 3, 2003, because the studio, including her office, was undergoing renovations. In addition to a manager, HQ stated that WMID is staffed every day by Mr. Antonio Rivera, who fulfills a non-managerial role answering the telephone and making certain the Station’s technical facilities are in working order.

6. On February 2, 2004, an agent attempted an inspection at 1:05 PM AST, but the WDIN studio in Camuy was closed with its main gate locked. Mr. Rivera, who lived nearby the studio, arrived at the studio about 5 to 10 minutes later. Mr. Rivera told the agent that Mr. Gabriel Orsini had begun working at WMID in December 2003 and that he had been informed that morning that Mr. Orsini was now his supervisor. Mr. Rivera also stated that Mr. Orsini typically left soon after Ms. Rodriguez would leave. Mr. Orsini arrived at the studio at 2:10 PM AST after telephone conversations between Mr. Rivera and Ms. Rodriguez.

7. On February 19, 2004, an agent arrived at the WDIN studio at 4:10 PM AST to find the studio gate locked and the parking spaces empty. As the agent was getting ready to leave, Mr. Rivera arrived to greet the agent. Neither Ms. Rodriguez nor Mr. Orsini was present at the studio.

8. On March 4, 2004 at 10:40 AM AST, agents arrived at WDIN’s studio and found the gate to the studio locked. Mr. Rivera arrived to greet the agents shortly thereafter. Neither Ms. Rodriguez nor Mr. Orsini was present at the studio. Mr. Rivera stated that Ms. Rodriguez “was here for five minutes and left” and that he hadn’t seen Mr. Orsini that day.

9. On March 24, 2004, agents twice visited WDIN’s studio. At 10:40 AM AST, the agents found the studio gate locked and the parking spaces empty. Mr. Rivera arrived to greet the agents shortly thereafter. Neither Ms. Rodriguez nor Mr. Orsini was present at the studio. Mr. Rivera stated he spoke to Ms. Rodriguez that morning but hadn’t seen Mr. Orsini that day. The agents returned to the studio at 2:00 PM AST. The agents again found the studio gate locked and the parking spaces empty. Mr. Rivera did not arrive to let the agents inspect the studio.

III. DISCUSSION

10. Section 73.1125(a) of the Rules states that each AM or FM station shall maintain a studio at

one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM or FM station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in Section 73.208(a)(1).⁶ In addition, the station's main studio must serve the needs and interests of the residents of the station's community of license.⁷ To fulfill this function, a station must, among other things, maintain a meaningful presence at its main studio.⁸ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁹ In addition, there must be "managerial and staff presence" on a full-time basis during normal business hours to be considered "meaningful."¹⁰ Although management personnel need not be "chained to their desks" during normal business hours, they must "report at the main studio on a daily basis, spend a substantial amount of time there and ...use the studio as a home base."¹¹ On December 3, 2003, February 2, February 19, March 4, and March 24, 2004, the WDIN main studio was not staffed during normal business hours as required by Section 73.1125(a) of the Rules.

11. Section 73.3526(a)(2) of the Rules states that every permittee or licensee of an AM or FM station shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(12) through (e)(14) of this section.¹² Section 73.3526(b) of the Rules requires the public inspection file be maintained at the station's main studio.¹³ Section 73.3526(c)(1) of the Rules requires the file be available for public inspection at any time during regular business hours.¹⁴ On December 3, 2003, an inspection of station WDIN's public inspection file revealed that required material was missing, specifically the quarterly Issues and Programs Lists and the most current contour map. Accordingly, complete public inspection file material was not available for inspection during regular business hours at the WDIN main studio.

12. Based on the evidence before us, we find HQ willfully¹⁵ and repeatedly¹⁶ violated Sections 73.1125(a) and 73.3526(c)(1) of the Rules by failing to maintain a presence at the station's main studio and failing to make available for inspection all of the required materials in the station's public inspection file.

⁶47 C.F.R. § 73.1125(a).

⁷See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

⁸*Id.*

⁹See *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

¹⁰*Id.*, 6 FCC Rcd at 3616, n.2.

¹¹*Id.*, 7 FCC Rcd at 6802.

¹²47 C.F.R. § 73.3526(a)(2).

¹³47 C.F.R. § 73.3526(b).

¹⁴47 C.F.R. § 73.3526(c)(1).

¹⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹⁶The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

13. Pursuant to Section 1.80(b)(4) of the Rules,¹⁷ the base forfeiture amount for violation of the main studio rule is \$7,000, and the base forfeiture amount for violation of the public file rule is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁸ Because the station maintained a portion of the required items in the public inspection file, a downward adjustment of the base forfeiture for that violation from \$10,000 to \$3,000 is warranted. Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,¹⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁰ HQ-103, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Sections 73.1125(a) and 73.3526(c)(1) of the Rules for failing to maintain a presence at the station’s main studio and failing to make available for inspection all of the required materials in the station’s public inspection file.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, HQ-103, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²¹

17. The response, if any, must be mailed to Federal Communications Commission, US Federal Building Room 762, San Juan, PR 00918-1731 within thirty days of the release date of this *NAL* and **MUST INCLUDE THE** *NAL*/Acct. No. referenced above.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial

¹⁷47 C.F.R. § 1.80(b)(4).

¹⁸47 U.S.C. § 503(b)(2)(D).

¹⁹47 U.S.C. § 503(b).

²⁰47 C.F.R. §§ 0.111, 0.311, 1.80.

²¹See 47 C.F.R. § 1.1914.

documentation submitted.

19. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

20. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to HQ-103, Inc, Box 780 Camuy, PR 00627 and to its counsel Fletcher, Heald & Hildreth, P.L.C. 11th Floor, 1300 North 17th street, Arlington, VA 22209-3801.

FEDERAL COMMUNICATIONS COMMISSION

Reuben Jusino
Resident Agent - San Juan Office, South Central Region
Enforcement Bureau